IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18169 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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D.L.MINES - Petitioner(s)
Versus
THE MAMLATDAR & 4 - Respondent(s)

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Appearance :

MR JV JAPEE for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR DIPEN DESAI, AGP for Respondent(s) : 3,
MR MA BUKHARI for Respondent(s) : 4,
None for Respondent(s) : 5,
NOTICE SERVED for Respondent(s) : 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5,5.2.6

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 14/12/2006

ORAL JUDGMENT

1. Rule. Mr.Desai, learned AGP waives service of

notice of Rule for Respondents No.1, 2, and 3, and Mr.Bukhari, learned Counsel waives service of notice of Rule for Respondents No.4 and 5/1 to 5/6. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. The petitioner has preferred the petition to quash and set aside the order of the District Collector dated 21.1.2006 and its confirmation thereof by the State Government dated 4.8.2006 in revisional jurisdiction. The petitioner has also prayed to direct the District Collector to hand over the possession of the land in question in pursuance of the mine lease granted to the petitioner and to allow the petitioner to carry out the mine activities as per the terms of the mine lease.

3. Heard Mr.Japee, learned Counsel appearing for the petitioner, Mr.Desai, learned AGP for the State Authorities and Mr.Bukhari, learned Counsel for the private respondent(s).

4. Upon hearing the learned Counsel appearing for both the sides, it appears that it is not in

dispute that initially the lease was granted to the petitioner over the land bearing the Survey No.101/A by the District Collector and the said order of the District Collector came to be confirmed up to the State Government level. However, as the private respondents were unauthorisedly occupying the land for which the lease was granted to the petitioner, they raised the grievance and consequently there were litigations before this Court being SCA No.15553 of 2003, No.12534 of 2004 and other matters. It is not in dispute that thereafter as per the order passed by this Court (Coram: M.R. Shah, J.) on 17.2.2005 in SCA No.12534/2004, the hearing was given to the petitioner, but the perusal of the notice dated 6.5.2005, which is produced on page 73 – Annexure “H” shows that it does not refer to contemplated action on the part of the District Collector for cancellation of the quarry lease already granted to the petitioner. It appears that thereafter based on the said notice dated 6.5.2005, the District Collector has passed the order on 2.1.2006 for

revocation of lease. The said order of the District Collector was initially challenged by the petitioner by preferring SCA No.2475 of 2006, which ultimately came to be withdrawn with a view to prefer revision before the State Government and the State Government as per the order dated 4th August, 2006 has dismissed the revision application. Under this circumstances, the petitioner has approached this Court by the present petition.

5. The question of giving opportunity of hearing or observance of principles of natural justice may differ in the matter when the lease is to be granted and when the lease is to be cancelled or revoked. In a matter where the right is already accrued to any party and such right is to be put an end by revocation or cancellation of such lease, it would be required for the District Collector to issue a show-cause notice and the person concerned must be given opportunity to meet with grounds of the show-cause notice. The hearing is also required to be given before the District Collector takes the final decision of

cancellation or revocation of the lease already granted. It appears that in the present case the District Collector proceeded on the basis of some report dated 15.2.2005, which was produced before this Court, but neither the petitioner, nor the private respondent represented by Mr.Bukhari were intimated or were aware about the report. Even if the observations made by this Court in its order dated 17.2.2005 in SCA No.12534 of 2004 are read, enabling the District Collector to reconsider the decision, it was not provided that the observance of the principles of natural justice were to be dispensed with, namely; issuance of show-cause notice for cancellation of the revocation of the lease and the further proceedings thereafter permitting filing of the reply and the hearing.

6. Mr.Desai, learned AGP attempted to submit that as such the hearing was given for revocation of the lease already granted to the petitioner and, he further submitted that there was opinion of officer of the Geological Department and in the submission of Mr.Desai, learned AGP, as the

State Government has also heard the petitioner in the revisional jurisdiction, the order of the District Collector cannot be said as in breach of the principles of natural justice. Therefore, he submitted that when, as observed by the District Collector, the revocation of the lease is on the ground that the mine operations may adversely affect the land situated of the private owners, such decision may not be interfered with by this Court.

7. Mr.Bukhari, learned Counsel appearing for the private respondent submitted that the land of the private respondent bearing Survey No.115 is situated on the boundary of land for which the lease is granted and, therefore, if any mine operations are undertaken over the land bearing Survey No.101/A, the same would adversely affect the existing agricultural activities of his client, whereas it was submitted by Mr.Japee, learned Counsel for the petitioner that there are other mine operations going on in the land nearby and touching to the land of the private respondent bearing Survey No.115. It was

submitted that lease is renewed qua those lands, there was no proper justification on the part of the District Collector to revoke the lease already granted to the petitioner. In the submission of Mr.Japee, the District Collector has exercised the power of the revocation at the instance of the private respondents, who were encroached over the land in question and as they had to vacate the land, the objections were filed and the District Collector has revoked the lease. He, therefore, submitted that the decision of the District Collector can be said as on the ground not germane to the exercise of the power for revocation.

8. In my view, all such aspects are premature at this stage in as much as, as observed earlier, the lease was already granted to the petitioner over the land bearing Survey No.101/A and the said order of the District Collector of granting of lease was confirmed by the State Government. Even if the matter was to be reconsidered by the District Collector, it was required for the District Collector to get an expert opinion, may

be of the competent officer of the geological department and further even if the District Collector was preliminarily satisfied with the opinion of the geological department, it was required for him to issue, in any case, show-cause notice and the opportunity was required to be given to the petitioner to meet with such aspects. It does not appear from the notice that at any point of time the petitioner was informed that there is an expert opinion against the petitioner and such opinion may warrant revocation of lease already granted. Further, it deserves to be recorded that the private respondents are as such not having any say in normal circumstances, when the lease is to be granted by the Government qua Government land. However, if the mine operations are within the radius of 50 mtrs. from the land belonging to any private person or in the radius of 200 mtrs from a railway land or any railway line, as per the restrictions provided vide Clause No.5, such persons or the administration may have the say in the matter and they may be heard also. As

there is no sufficient material on record before this Court as to whether the land belonging to the petitioner are to fall within that prohibited area of the blasting operation, it cannot be conclusively said that the private respondents will have any say in the matter when the issue is to be considered for revocation of the lease already granted, but certainly they cannot have any say in the matter, merely because they had encroached over the said Government land bearing Survey No.101/A, from which ultimately they are evicted or to be evicted if not evicted. I find that it will be for the District Collector to get opinion of the expert also on the aspects of touching the boundary of the land of the private respondents and as to whether the land would fall in the prohibited area of blasting operations, keeping in view the rule and clause 5 of the aforesaid restrictions for mining operations.

9. It has been stated by Mr.Japee, learned Counsel appearing for the petitioner that the private respondents are shown on paper as evicted,

otherwise they are even as on today cultivating the land in question as encroachers, whereas such aspect is denied by Mr.Bukhari for the private respondents. In the event the District Collector has not taken over the actual possession of the land bearing Survey No.101/A, for which the private respondents have no right whatsoever, they are required to be evicted, if required, with the help of police held and the steps will be required to be taken by the District Collector through his subordinate staff to ensure that the private respondents are not allowed to enter over the said land, which is belonging to the Government.

10. Under the above circumstances, I find that the order passed by the District Collector for revocation of the lease and its confirmation thereof by the State Government in revisional jurisdiction deserves to be quashed and set aside with the direction that the District Collector shall issue a show-cause notice with the ground of revocation to the petitioner and the opportunity of hearing shall be given to the

petitioner and a fresh decision in accordance with law shall be taken as early as possible, preferably within a period of three months from the date of issuance of the notice. Until the aforesaid exercise is undertaken, the petitioner shall not undertake any excavation of minerals or undertake any mining operation over the land in question and status quo qua such activities shall be maintained.

11. The District Collector shall decide the matter, keeping in view of the aforesaid observations of this Court in the present order. The District Collector shall ensure that the possession of the land bearing Survey No.101/A over which there was occupation of private respondents is made clear and the same is taken over by the State Government and no encroachments are permitted over such land. It is further clarified that if the District Collector finds that the land of the private respondents bearing Survey No.115 is situated within the prohibited area of the restrictions for mining operation or blasting, as the case may be, keeping in view

the Clause 5 of the restrictions provided for mining operations as per The Mines Minerals Rules of 1966, the opportunity of hearing shall also be given to the private respondents on the aspects of apprehended damage and while taking the decision, objections, if any, raised by the private respondents shall also be taken into consideration.

12. The petition is allowed to the aforesaid extent. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

14.12.2006 **(Jayant Patel, J.)**

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